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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/254,407	02/07/2000	MICHAEL WILLIAM GRADY	JJM-399	6913

7590 09/08/2004

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EXAMINER

WHITE, EVERETT NMN

ART UNIT	PAPER NUMBER
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1623

DATE MAILED: 09/08/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/254,407
Filing Date: February 07, 2000
Appellant(s): GRADY ET AL.

Theodore J. Shatynski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 18, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-15 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Improper Multiple Dependent Claims

Claims 11-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 112

Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claims 6 and 7, the term "saccharine residue" lacks clear antecedent basis, which renders the claims indefinite. It appears that the claims intended to refer to a "saccharide residue".

Claim Rejections - 35 USC § 103

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunc (US Patent No. 3,939,836).

Appellant claims a wound dressing or ointment comprising a synthetic sulfated polysaccharide selected from the group consisting of sulfated cellulose derivatives and sulfated polyanionic polysaccharides, said synthetic sulfated polysaccharide being present in an amount sufficient to bind matrix metalloproteinases. Additional limitations in the dependent claims include specific types of sulfated celluloses, sulfated alginates, sulfated pectins, sulfated hyaluronic acid; sulfated polysaccharide containing at least 0.1 sulfate groups for each saccharide residue; the average molecular weight of the sulfated polysaccharide; and the sulfated polysaccharide being in a specific form.

The Tunc patent discloses a water dispersible nonwoven fabric comprising 4 percent to about 35 percent by weight of a binder comprising an alkali salt of a sulfated cellulose ester. See Examples 1-7 of the Tunc patent wherein specific examples of sulfated cellulose esters are set forth. The examples do not disclose the sulfated cellulose esters in dressings. However, the abstract of the Tunc patent does suggest using the sulfated cellulose esters in wound dressings by reciting incorporation of the sulfated cellulose ester into surgical dressings. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to replace the sulfated cellulose ester in the dressing of Tunc patent with a sulfated cellulose derivative in view of their closely related structures and the resulting expectation of similar therapeutic properties.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunc (US Patent No. 3,939,836).

Appellant claims a method of treatment of medical conditions mediated by matrix metalloproteinase wherein the treatment comprises applying to a wound the composition of claim 1. An additional limitation in the dependent claim includes the medical condition being a chronic wound.

On page 5, 3rd paragraph of the instant specification, Appellant discloses that the matrix metalloproteinases referred to in the instant claims are implicated in a number of medical conditions, including chronic wounds such as decubitus ulcers. Appellant recites that this is because the balance between matrix deposition and tissue turnover, which in turn may depend on the balance between proteolytic enzymes and their inhibitors, is fundamental to wound healing and to certain other medical conditions. The specification states that chronic wound fluids have been shown to contain elevated levels of MMP2 (Gelatinase A) and MMP9 (Gelatinase B).

The abstract of the Tunc patent discloses using the sulfated cellulose esters thereof in surgical dressings. The characterization of medical conditions mediated by matrix metalloproteinase on page 5, 3rd paragraph of the instant specification includes wounds that result from having surgery. Hence, a medical condition mediated by matrix

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metalloproteinase is an inherent feature of surgical wounds and the Tunc patent clearly suggests treatment of such conditions by the use of surgical dressings comprising sulfated cellulose esters. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to replace surgical dressing comprising sulfated cellulose ester used for surgery applications in the Tunc patent with a wound dressing comprising a sulfated cellulose derivative in view of the similar compositional structures comprised in the dressings and the resulting expectation of similar therapeutic properties.

(11) Response to Argument

Improper Multiple Dependent Claims

Appellant's arguments filed in the Appeal Brief dated March 18, 2004 have been fully considered but they are not persuasive. Claims 11-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. Claims 11-13 are dependent from Claims 1-7. However, since Claim 6 is a multiple dependent Claim, Claims 11-13 are improper.

Claim Rejections - 35 USC § 112

Appellant's arguments filed in the Appeal Brief dated March 18, 2004 have been fully considered but they are not persuasive. The Examiner maintains that the term "saccharine residue" in Claims 6 and 7, line 3 of each claim, should be changed to - - saccharide residue - -.

Claim Rejections - 35 USC § 103

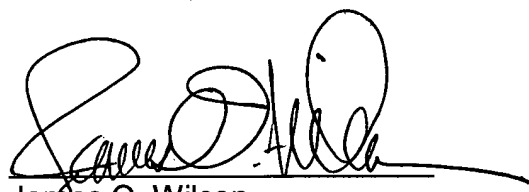
Appellant's arguments filed in the Appeal Brief dated March 18, 2004 have been fully considered but they are not persuasive. Appellant argues that the Tunc patent is silent with regard to the claimed wound dressing or ointment. This argument is not persuasive since the Tunc patent does suggest a wound dressing by reciting a surgical dressing that has been incorporated with a sulfated cellulose ester (see the abstract).

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Appellant further argues that Tunc is not concerned with treatment of chronic wounds and binding of MMP's. This argument is not persuasive since the treatment of wounds resulted from surgery as suggested in the Tunc patent is within the broader teaching of treating chronic wounds as set forth in the instantly claimed invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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August 26, 2004

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